उत्तर प्रदेश शासन
वित्त (सामान्य) अनुभाग-2
संख्या-7/2021/जी-2-154/दस-2021
लखनऊ : दिनांक : 14 सितम्बर, 2021
<u>कार्यालय-ज्ञाप</u>

मा0 उच्च न्यायालय, मद्रास में योजित रिट याचिका संख्या-15732/2017 पी0 अय्यमपेरूमल बनाम सरकार में दिये गये निर्णय दिनांक 15.09.2017 तथा उक्त के विरुद्ध मा0 सर्वोच्च न्यायालय द्वारा एस0एल0पी0 (सिविल) डायरी नं0 22283/2018 में पारित निर्णयादेश दिनांक 23 जुलाई, 2018 के सन्दर्भ में विभिन्न विभागों के ऐसे कार्मिक जो अपनी अधिवर्षता आयु दिनांक 30 जून को पूर्ण कर सेवा-निवृत्त हुए हैं, उनके द्वारा गत वर्ष में की गयी सेवा के आधार पर दिनांक 01 जुलाई को नोशनल रूप से एक अतिरिक्त वेतनवृद्धि देते हुए सेवा-नैवृत्तिक लाभ दिये जाने की मॉग की जा रही है। इस सम्बन्ध में सम्बन्धित कार्मिक द्वारा विभिन्न विभागों के समक्ष एतद्सम्बन्धी प्रत्यावेदन/मॉग पत्र दिया जा रहा है एवं मा0 न्यायालय के समक्ष विभिन्न रिट याचिकाएं भी योजित की जा रही हैं जिसके सन्दर्भ में सम्बन्धित प्रशासकीय विभागों द्वारा कार्मिकों के प्रत्यावेदन को निस्तारित किया जाना या कि मा0 न्यायालय के समक्ष योजित विभिन्न रिट याचिकाओं में प्रतिशपथ-पत्र दाखिल किया जाना/प्रतिवाद किया जाना अपेक्षित रहता है।

2- उपर्युक्त के सम्बन्ध में भारत सरकार, गृह मंत्रालय (पुलिस-1-डिवीजन) के पत्र संख्या-16011/09/2021-आईपी0सी.II, दिनांक 01 जुलाई, 2021 द्वारा भारत सरकार के अनेक दिशा-निर्देशों को संलग्न कर प्रेषित करते हुए सभी राज्य सरकारों के मुख्य सचिवों से अनुरोध किया गया है कि राज्य सरकारों द्वारा इस पत्र में सन्दर्भित पत्रों एवं दिशा-निर्देशों तथा मा0 सर्वोच्च न्यायालय के संगत आदेश को ध्यान में रखते हुए आवश्यक कार्यवाही की जाये।

3- अतएव भारत सरकार, गृह मंत्रालय (पुलिस-1-डिवीजन) का सन्दर्भित पत्र दिनांक 01 जुलाई, 2021 (मय संलग्नकों सहित) आपको इस आशय से प्रेषित है कि उक्त में निहित दिशा-निर्देशों के अनुसार एतद्सम्बन्धी प्रकरणों में प्रत्यावेदन निस्तारण/प्रतिवाद की कार्यवाही सुनिश्चित की जाये क्योंकि इन दिशा-निर्देशों के अनुसार 30 जून अथवा 31 दिसम्बर को सेवानिवृत्त होने वाले कार्मिकों को, जिनकी पिछली वेतनवृद्धि की तिथि 01 जुलाई एवं 01 जनवरी रही हो, सेवानिवृत्ति की तिथि के बाद पडने वाली 01 जुलाई व 01 जनवरी की तिथि को वेतनवृद्धि देय नहीं है।

एस0 राधा चौहान
अपर मुख्य सचिव।

1- यह शासनादेश इलेक्ट्रानिकली जारी किया गया है, अत: इस पर हस्ताक्षर की आवश्यकता नही है ।

2- इस शासनादेश की प्रमाणिकता वेब साइट http://shasanadesh.up.gov.in से सत्यापित की जा सकती है ।

http://shasanadesh.up.gov.in

प्रतिलिपि समस्त अपर मुख्य सचिव/प्रमुख सचिव/सचिव को आवश्यक कार्यवाही हेतु प्रेषित।

आज्ञा से,

संलग्नक : यथोक्त।

सरयू प्रसाद मिश्र
विशेष सचिव।

http://shasanadesh.up.gov.in

1- यह शासनादेश इलेक्ट्रानिकली जारी किया गया है, अत: इस पर हस्ताक्षर की आवश्यकता नही है ।

2- इस शासनादेश की प्रमाणिकता वेब साइट http://shasanadesh.up.gov.in से सत्यापित की जा सकती है ।

No.5147/MS/GT/2021

No.16011/ 09/2021-IPS.II
Government of India/ Bharat Sarkar
Ministry of Home Affairs/ Grih Mantralaya
(Police-I Division)

20

North Block, New Delhi.
Dated 6/ July, 2021.

To.

E/No-17/4757/2021-24

The Chief Secretaries of all State Governments
(As per list attached)

SL-239

Sub: Grant of one notional increment (as due on 1st July) for the pensionary benefits to those employees who had retires on 30th June before drawing the same.

Sir,

I am directed to enclose herewith a copy of Office Memorandum No.1453545/ 2021-Estt (Pay-I) dated 24.06.2021 received from Department of Personnel and Training (DoP&T) on the subject mentioned above.

2. DoP&T vide OM dated 03.02.2021 had issued necessary instructions on the issue of grant of notional increment and consequently pensionary benefits on the rational of the order dated 15.09.2017 passed by the Hon'ble High Court of Madras in WP No 15732 of 2017 the matter of P. Ayyamperumal. Meanwhile, Hon'ble Supreme Court of India vide its order dated 05.04.2021 in SLP (C) No.4722/2021 filed by Ministry of Railways in a case involving same matter has issued the following directions:

Acs, JE
Acs, वित्त/वित्त

"Issue notice returnable after three weeks. In the meanwhile, there will be stay of operation of the order dated 18th December, 2019 of the Central Administrative Tribunal, Bangalore Bench in Original Application No.170/00677/2019, affirmed by the judgment and order impugned. The pensioners shall, however, in the meanwhile without prejudice to the rights and contentions of parties pay retiral dues of the Respondent computed on the basis of the last pay drawn by him on the date of his retirement, i.e.30.06.2014".

9.7.2021
(अमृत त्रिपाठी)
विशेष सचिव एवं स्टॉफ ऑफिसर
मुख्य सचिव,
उ० प्र० शासन।

TA0470(SPM)

3. All the State Governments are requested to take necessary action in the matter as per the provisions stipulated in instructions issued by DoP&T vide OM dated 03.02.2021 and order dated 05.04.2021 of the Hon'ble Supreme Court of India.

Yours faithfully,

12/7/2021
अपर मुख्य सचिव, वित्त विभाग
उत्तर प्रदेश शासन

Encl.:As above.

(Sanjeev Kumar)
Under Secretary to the Government of India

16/US(M)/21
JS(P)

Copy for similar action to: Joint Secretary (UT), MHA, Room No 12 MDCNS, New Delhi.

12/7/21
(सरयू प्रसाद मिश्र)
विशेष सचिव,
वित्त विभाग
उत्तर प्रदेश शासन।

2021-4-2
12/7

Most Important
Shalini/Attn...
14/7/21

List of States where letter addressed to:

1. Chief Secretary, Govt. of Andhra Pradesh, Hyderabad.
2. Chief Secretary, Govt. of Arunanchal Pradesh, Itanagar
3. Chief Secretary, Govt. of Assam, Dispur
4. Chief Secretary, Govt. of Bihar, Patna.
5. Chief Secretary, Govt. of Chhattishgarh, Raipur
6. Chief Secretary, Govt. of Goa, Panaji
7. Chief Secretary, Govt. of Gujarat, Gandhinagar
8. Chief Secretary, Govt. of Haryana, Chandigarh
9. Chief Secretary, Govt. of Himachal Pradesh, Shimla
10. Chief Secretary, Govt. of Jharkhand, Ranchi
11. Chief Secretary, Govt. of Karnataka, Bengaluru
12. Chief Secretary, Govt. of Kerala, Thiruvanathapuram
13. Chief Secretary, Govt. of Madhya Pradesh, Bhopal
14. Chief Secretary, Govt. of Maharashtra, Mumbai
15. Chief Secretary, Govt. of Manipur, Imphal,
16. Chief Secretary, Govt. of Meghalaya, Shillong
17. Chief Secretary, Govt. of Mizoram, Aizwol
18. Chief Secretary, Govt. of Nagaland, Kohima
19. Chief Secretary, Govt. of Odisha, Bhubaneswar
20. Chief Secretary, Govt. of Punjab, Chandigarh
21. Chief Secretary, Govt. of Rajasthan, Jaipur
22. Chief Secretary, Govt. of Sikkim, Gangtok
23. Chief Secretary, Govt. of Tamil Nadu, Chennai
24. Chief Secretary, Govt. of Telangana, Hyderabad
25. Chief Secretary. Govt. of Tripura, Agartalla
26. Chief Secretary Govt. of Uttarakhand, Dehradun.
27. Chief Secretary, Govt. of Uttar Pradesh, Lucknow.
28. Chief Secretary, Govt. of West Bengal, Kolkata.

COURT CASE
TIME BOUND

F. No. 1453545/2021-Estt (Pay-I)
Government of India
Ministry of Personnel, Public Grievances & Pensions
(Department of Personnel & Training)
***

North Block, New Delhi
Dated the 24th June, 2021

OFFICE MEMORANDUM

Subject: Grant of benefit of one notional increment (as due on 1st July) for the pensionary benefits to those employees who had retires on 30th of June before drawing the same.

The undersigned is directed to refer to the subject cited above and to state that the issue of grant of notional increment and consequential pensionary benefits on the rationale of the Order dated 15.09.2017 passed by the Hon'ble High Court of Madras in WP 15732 of 2017 filed by Shri P. Ayyamperumal was examined and necessary instructions in this regard were issued vide this Department's OM 19/2/2018-Estt (Pay-I) dated 03.02.2021. This OM is available at the link https://documents.doptcirculars.nic.in/D2/D02est/19-2-2018-Estt%20Pay-IMVLPO.PDF) or may be accessed from this Department's website https://dopt.gov.in Notifications : OMs and Orders : 13. Establishment : Pay Rules.

2. Meanwhile, Ministry of Railways have brought to the knowledge of this Department the Order dated 05.04.2021 passed by the Hon'ble Supreme Court of India in a case involving same subject matter {SLP(C) No. 4722/2021}. In the case under reference (OA No170/677/2019), Hon'ble CAT, Bangalore Bench, allowed grant of notional annual increment to an employee who superannuated from service on 30.06.2014. Ministry of Railways challenged this judgment in the Hon'ble High Court of Karnataka in WP No 146967 of 2020 (S-CAT), which was rejected by the High Court on 22.10.2020. Thereafter, Ministry of Railways filed a Special Leave Petition {SLP (C) No 4722/2021} against the Order dated 22.10.2020 of the Hon'ble High Court of Karnataka. Hon'ble Supreme Court heard the matter and issued the following directions in its Order dated 05.04.2021:

"Issue notice returnable after three weeks. In the meanwhile, there will be stay of operation of the order dated 18th December, 2019 of the Central Administrative Tribunal, Bangalore Bench in Original Application No. 170/00677/2019, affirmed by the judgment and order impugned. The Petitioners shall, however, in the meanwhile without prejudice to the rights and contentions of parties pay retiral dues of the Respondent computed on the basis of the last pay drawn by him on the date of his retirement, that is, 30.06.2014."

3. Ministries /Departments are requested to take note of the contents of instructions issued vide this Department's OM 19/2/2018-Estt (Pay-I) dated 03.02.2021 and the Order dated 05.04.2021 of the Hon'ble Supreme Court and defend the Court Cases similarly placed on behalf of Union of India including this Department, in consultation with this Department and other nodal Departments, if necessary, and keep the interest of this Department in view while doing so.

(Shukdeo Sah)
Under Secretary to the Government of India
Tel. No.23040489

To

All Ministries/Departments of Government of India.

Copy also forwarded to:-

1. The Comptroller & Auditor General of India.
2. Secretary General, Supreme Court of India.
3. Controller General of Accounts/ Controller of Accounts, Ministry of Finance.
4. Union Public Service Commission/ Lok Sabha Sectt./ Rajya Sabha Sectt./ Cabinet Sectt./ Central Vigilance Commission/ President's Sectt./ Vice-President's Sectt/ Prime Minister Office/ Niti Aayog.
5. Government of all States and Union Territories
6. Department of Personnel and Training (AIS Division)/ JCA/ Admn. Section
7. Secretary, National Council of JCM (Staff Side), 13-C, Feroz shah Road, New Delhi.
8. All Members of Staff Side of the National Council of JCM/ Department Council.
9. All Officers/ Sections of Department of Personnel and Training/ Department of Administrative Reforms & Public Grievances/ Department of Pensions & Pensioners' Welfare/ PESB.
10. Joint Secretary (Pers.), Department of Expenditure, Ministry of Finance
11. Additional Secretary (Union Territories), Ministry of Home Affairs.
12. NIC, DOPT – with request to upload this O.M. on the Department's website under OMs & Orders (Establishment—Pay Rules) and also under "What is New".
13. Hindi Section, DOPT for Hindi Translation.

(Shukdeo Sah)
Under Secretary to the Government of India
Tel. No.23040489

F. No. 19/2/2018-Estt (Pay-I)
Government of India
Ministry of Personnel, Public Grievances & Pensions
(Department of Personnel & Training)

North Block, New Delhi
Dated 3rd February, 2021

OFFICE MEMORANDUM

Subject: References/Representations/Court cases for granting notional increment for pensionary benefits in pursuance of the judgement dated 15.09.2017 of Hon'ble High Court of Madras in W.P. No. 15732 of 2017 in the case of P. Ayyamperumal Vs Union of India & Ors-regarding.

***

The undersigned is directed to refer to references/representations/ court cases/VIP references, received in this Department in large numbers on the issue of granting notional increment for pensionary benefits to those Central government servants who have retired on 30th June/ 31st December of a year, in pursuance of the judgement dated 15.09.2017 of Hon'ble High Court of Madras in W.P. No. 15732 of 2017 in the case of P. Ayyamperumal Vs Union of India & Ors.

2. The issue has been examined in this Department in consultation with Department of Legal Affairs and it has been observed that the judgement dated 15.09.2017 of Hon'ble High Court of Madras in W.P. No.15732 of 2017 in the case of P. Ayyamperumal Vs Union of India & Ors. is *'in personam'* in nature. A brief note reflecting the Government's stand on this issue is attached as Annexure-I.

3. Further, it is also mentioned that in a similar case, the Hon'ble Supreme Court, vide judgment dated 29.03.2019 (copy enclosed as Annexure-II), while dismissing the SLP (C) Dy. No.6468/2019 filed by D/o Telecommunications against the judgment dated 03.05.2017 of Hon'ble High Court, Lucknow Bench in WP No.484/2010 in the matter of UOI & Ors. Vs. Sakha Ram Tripathy & Ors., has, *inter alia*, observed the following.

> *"There is delay of 566 days in filing the special leave petition. We do not see any reason to condone the delay. The Special leave petition is dismissed on delay, **keeping all the questions of law open.**"*

4. Since the question of law is open and not yet decided, decision for implementation of the judgement dated 15.09.2017 of Hon'ble High Court of Madras in W.P No. 15732 of 2017 in Shri P. Ayyamperumal case, *in rem* has not been taken.

5. Accordingly, all Ministries/Departments are, therefore, advised to dispose of all pending grievances seeking notional increment for pensionary benefits and also to defend the various pending Court Cases in this matter.

6. In their application to the persons belonging to Indian Audit and Accounts Department, these orders are issued under Article 148(5) of the Constitution and after consultation with the Comptroller and Auditor General of India.

7. Hindi Version will follow.

3/2/21

(Murali Bhavaraju)
Deputy Secretary to the Government of India
Tel. No.011-23094542

To

All Ministries/Departments of Government of India.

Copy also forwarded to:-

1. The Comptroller & Auditor General of India.
2. Secretary General, Supreme Court of India.
3. Controller General of Accounts/ Controller of Accounts, Ministry of Finance.
4. Union Public Service Commission/ Lok Sabha Sectt./ Rajya Sabha Sectt./ Cabinet Sectt./ Central Vigilance Commission/ President's Sectt./ Vice-President's Sectt/ Prime Minister Office/ Niti Aayog.
5. Government of all States and Union Territories
6. Department of Personnel and Training (AIS Division)/ JCA/ Admn. Section
7. Secretary, National Council of JCM (Staff Side), 13-C, Feroz shah Road, New Delhi.
8. All Members of Staff Side of the National Council of JCM/ Department Council.
9. All Officers/ Sections of Department of Personnel and Training/ Department of Administrative Reforms & Public Grievances/ Department of Pensions & Pensioners' Welfare/ PESB.
10. Joint Secretary (Pers.), Department of Expenditure, Ministry of Finance
11. Additional Secretary (Union Territories), Ministry of Home Affairs.
12. NIC, DOPT – with request to upload this O.M. on the Department's website under OMs & Orders (Establishment—Pay Rules) and also under "What is New".
13. Hindi Section, DOPT for Hindi Translation.

3/2/21

(Murali Bhavaraju)
Deputy Secretary to the Government of India
Tel. No.011-23094542

Annexure-I

Note on issue of granting a notional increment for pensionary benefits in pursuance of the judgment dated 15.09.2017 of Hon'ble High Court of Madras in W.P. No.15732 of 2017 in the case of P. Ayyamperumal Vs Union of India & Ors.

***

Hon'ble High Court of Madras, vide Order dated 15.09.2017, allowed the W.P. No. 15732 of 2017 filed by Shri P. Ayyamperumal relying upon its earlier judgment dated 20.09.2012 in W.P. No. 8440 of 2011 M. Balasubramaniam Vs State of Tamil Nadu. The said case referred by Hon'ble High Court in the said judgement is related to the Fundamental Rules of Tamil Nadu Government whereas the case of petitioner Shri P. Ayyamperumal relates to Central Government Rules. As per the provisions under the Tamil Nadu Fundamental Rule 26(a), the annual increments of the Govt. Servants are regulated in four quarters viz. 1st January, 1st April, 1st July and 1st October. For the Central Government, the increment accrues annually on 1st July only (6th CPC scenario) [now 1st July and 1st January in 7th CPC scenario]. Hence, argument of petitioner is devoid of merits.

2. In light of the relevant provisions of the Fundamental Rules like 9 (21), 9(6), 17(1), 22, 26(a) and 56(a), as also the provisions of CCS (RP) Rules, 2008, a person appointed as a Government servant is entitled to pay, and is also entitled to draw the annual increment as long as such Government servant discharges duties of the post. However, such Government servant may not be entitled to draw the pay and allowances attached to the post as soon as he ceases to discharge those duties. In other words, as per F.R. 17 read with F.Rs. 24 and 26, annual increment is given to a Government servant to enable him to discharge duty and draw pay and allowances attached to the post. If such Government servant ceases to discharge duties by any reason say, by reason of attainment of age of superannuation, he will not be entitled to draw pay and allowances. Such an employee would not be entitled to any increment if it falls due after the date of retirement, be it on the next day of retirement or somctime thereafter. An employee must satisfy not only the condition of becoming entitled for increment, but also should continue to be on duty as a Government servant on the due date (1st July/ 1st January) to avail the increment.

3. Further, in a similar matter, Hon'ble High Court of Andhra Pradesh at Hyderabad, in the year 2005, in the C. Subbarao case, has, inter alia, observed as under:

> *"In support of the above observations, the Division Bench also placed reliance on Banerjee case (supra). We are afraid, the Division Bench was not correct in coming to the conclusion that being a reward for unblemished past service, Government servant retiring on the last day of the month would also be entitled for increment even after such increment is due after retirement. We have already made reference to all Rules governing the situation. There is no warrant to come to such conclusion. Increment is given (See Article 43 of CS Regulations) as a periodical rise to a Government employee for the good behavior in the service. Such increment is possible only when the appointment is "Progressive Appointment" and it is not a universal rule. Further, as per Rule 14 of the Pension Rules, a person is entitled for pay, increment and other allowances only when he is entitled to receive pay from out of Consolidated Fund of India and continues to be in Government service. A person who retires on the last working day would not be entitled for any increment falling due on the next day and payable next day thereafter (See Article 151 of CS Regulations), because he would not answer the tests in these Rules. Reliance placed on Banerjee case (supra) is also in our considered opinion not correct because as observed by us, Banerjee case (supra) does not deal with increment, but deals with enhancement of DA by the Central Government to pensioners. Therefore, we are not able to accept the view taken by the Division Bench. We accordingly, overrule the judgment in Malakondalah case (supra)."*

4. In addition, subsequent to the judgment of Hon'ble High Court of Madras in the P. Ayyamperumal case, Hon'ble CAT Madras Bench vide its Orders dated 19.03.2019 in O.A.No.310/00309/2019 and O.A. No.310/00312/2019 and Order dated 27.03.2019 in O.A. No.310/00026/2019 has also dismissed similar requests related with notional increment for pensionary benefits.

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26/7341/2021/P(I)-IPS(II)

Annexure - II

ITEM NO.14 COURT NO.7 SECTION XI

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 6468/2019

(Arising out of impugned final judgment and order dated 03-05-2017 in Service Bench No. 484/2010 passed by the High Court Of Judicature At Allahabad, Lucknow Bench)

UNION OF INDIA & ORS. Petitioner(s)

VERSUS

SAKHA RAM TRIPATHI Respondent(s)

(FOR ADMISSION and Interim Relief and
IA No.44315/2019-CONDONATION OF DELAY IN FILING)

Date : 29-03-2019 This petition was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE UDAY UMESH LALIT
HON'BLE MS. JUSTICE INDU MALHOTRA

For Petitioner(s) Ms. Madhvi Divan, ASG
Mr. Anmol Chandan, Adv
Mr. Amit Sharma, Adv
Mr. Gurmeet Singh Makker AOR

For Respondent(s)

UPON hearing the counsel the Court made the following

O R D E R

We have heard Ms. Madhvi Divan, learned Additional Solicitor General for the petitioner-Union of India.

There is delay of 565 days in filing the special leave petition. We do not see any reason to condone the delay.

The special leave petition is dismissed on delay, keeping all the questions of law open.

Pending applications, if any, shall also stand disposed of.

(MAHABIR SINGH)
COURT MASTER

(RAVINDER KAUR)
BRANCH OFFICER